

STATE OF MICHIGAN  
COURT OF APPEALS

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KATHY NEWMAN,

Plaintiff-Appellant,

v

IVANHOE-HUNTLEY COMPANIES,

Defendant-Appellee.

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UNPUBLISHED

November 26, 2002

No. 237314

Oakland Circuit Court

LC No. 01-029443-CL

Before: Markey, P.J., and Saad and Smolenski, JJ.

MEMORANDUM.

Plaintiff appeals by right the order granting defendant's motion for summary disposition under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff brought this action seeking the payment of compensation and commissions for the sale of homes for defendant's developments. The trial court granted defendant's motion for summary disposition, finding that plaintiff failed to present evidence to establish that she was an employee of defendant.

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating the motion, the trial court considers affidavits, pleadings, depositions, admissions and other evidence submitted by the parties in a light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). A trial court's decision on a motion for summary disposition is reviewed de novo. *Id.*, 118. The reviewing court should evaluate a motion under MCR 2.116(C)(10) by considering the substantively admissible evidence actually proffered in opposition to the motion. *Id.*, 121.

Defendant presented evidence that plaintiff was an independent contractor who was licensed as a real estate salesperson with another entity but that her license had lapsed. Plaintiff admitted no signed writing existed to document her relationship with defendant. Plaintiff failed to proffer evidence that she was an employee of defendant, or that she had a contract to sell real estate for a commission. Plaintiff merely alleged that she was an employee and did not counter

the allegations in defendant's affidavit. The trial court properly granted summary disposition as a matter of law.

We affirm.

/s/ Jane E. Markey

/s/ Henry William Saad

/s/ Michael R. Smolenski